

TITLE 12 ADULT BUSINESS REGULATIONS

Chapter 1 MASSAGE ESTABLISHMENTS

12-1-1. Definitions.

For the purposes of this chapter, the following words shall have the meanings as set forth herein:

- (a) The word "massage" or "massage therapy" means a manual or mechanical manipulation of the parts of the body by rubbing, kneading, slapping or the like, so as to promote circulation, to relax the muscles as in deep muscle therapy, to tone up the general system, promote general health and relieve certain conditions that respond to massage or massage therapy allowed by the State of Utah to be practiced without prescription from a licensed physician.
- (b) A "masseur" is any person not otherwise duly licensed by the Department of Registration of the State of Utah to practice those treatments referred to above, who engages in, conducts, or carries on the giving of massage or massage therapy to another person for a fee.
- (c) A "massage establishment" is a public or private establishment where licensed masseurs are hired, individually, or act as an association, firm or corporation which engage in, conduct, carry on, or permit to be carried on, any business of the giving of a massage or massage therapy.
- (d) The words "apprentice massage therapist" or "apprentice masseur" shall mean an individual taking training from a licensed, accredited massage therapist, under approved conditions, as supervised by the provisions of the State of Utah and/or the American Massage Therapy Association, or a student taking an approved massage course of training at an accredited school and working for and with an accredited licensed or registered massage therapist or masseur.
- (e) The words "master massage therapist" or "a master masseur" means a registered massage therapist, licensed under the terms of this ordinance as such or licensed under the laws of the State of Utah, if applicable, who has shown proof of three (3) years of successful massage therapy experience and who is the proprietor,

manager or supervisor or person in complete control of any massage establishment. This term designates the person in complete charge of all operations and as such is completely responsible for the acts, deportment and professional conduct of the establishment and all persons in or employed by the massage establishment. As such, any master massage therapist or master masseur shall insure that each person employed under the provisions of this chapter shall first have obtained a valid license.

12-1-2. License Required.

It shall be unlawful for any person to operate, conduct, or maintain a massage establishment or engage in the business of a masseur in Sandy City without first obtaining a business license to do so.

12-1-3. License Fee.

The license fee for a massage establishment or for conducting the business of a masseur shall be established by resolution of the City Council. Such fees shall be computed upon and paid for a period of one year and shall be administered and collected in accordance with regulations as established by the Sandy City Business License Division.

12-1-4. Subsidiary Use.

No massage establishment shall be maintained within the limits of Sandy City as an independent business establishment, but any such massage establishment shall only be maintained and a license issued therefor as a use for business subsidiary to and in conjunction with a recreational, health, spa or exercise facility which has previously received approval as to its conformance with the zoning, business and other regulatory ordinances of the City. No massage parlor shall occupy, in the capacity of a subsidiary use, more than ten (10) percent of the net usable floor space of the recreational, health, spa or exercise facility in which the massage establishment is so located.

12-1-5. License Application.

Every person desiring to be licensed as a masseur, apprentice masseur, master masseur or to obtain a massage parlor license shall apply to the Sandy City License Division and shall file with said application the following:

- (a) A statement under oath that the applicant is at least 18 years of age;
- (b) The applicant's full name and present and complete address, with dates of residence;
- (c) Two previous addresses of the applicant immediately prior to and within ten (10) years of, the present address as set forth above, with length of time and dates of residence at each;
- (d) Two previous business addresses of the applicant immediately prior to, and within

ten (10) years of, the present business address as set forth upon the application, with length of time and dates of business practice at each such address.

- (e) A statement showing the street, building and location of the place where the applicant proposes to conduct, operate, or maintain such massage establishment or engage in the pursuits of a masseur;
- (f) A satisfactory statement that the applicant:
 - (1) Has practiced massage therapy as a licensed massage therapist for at least three (3) years prior to this act, and has a license or American Massage Therapy Association certification as proof thereof; or
 - (2) Has graduated from an approved massage therapy school with a diploma therefor, which diploma must be presented with the application and shall include copies of credentials issued therewith; or
 - (3) Is a fully accredited member of the American Massage Association; or
 - (4) Has had 1,000 hours of acceptable training, either in school or as an apprentice under a licensed massage therapist and has been engaged in practice at least five (5) years as a full time massage therapist; or
 - (5) Is a student now in school or is applying as an apprentice massage therapist or apprentice masseur in capacity of a full apprenticeship under a full and approved qualified massage therapist or licensed masseur and such applicant shall be granted an apprentice's license upon presentation of a statement from the school which the student is attending or a statement from the person acting as preceptor.
- (g) Five letters from responsible persons confirming the integrity and moral character of the applicant; and
- (h) A complete list of all convictions, if any there be, of any crime or type which involve moral turpitude, malpractice or other offenses against the public health, safety and welfare; and
- (i) Such other information as the City may require in order to investigate the information as set forth by the applicant.

12-1-6. Investigation of Applicants.

Applicants for licensing as a massage establishment as a masseur of any of the categories heretofore set forth shall be referred to the Chief of Police, the Fire Chief, the Zoning Department and the Salt Lake City/County Board of Health and such other City departments as may be necessary for investigation and recommendation. The Police Department shall make findings and recommendations with regard to the moral character of the applicant as determined by investigation of the letters of reference and criminal convictions, if any of the applicant. The Salt Lake City/County Board of Health shall make findings and recommendations with regard to

the sanitary conditions of the premises to be licensed in view of the then applicable laws and ordinances governing health and sanitation. The other departments of the City shall review the application and the premises to be licensed to determine conformance with the laws, ordinances, and regulations of the City as administered by the several investigating departments. All recommendations and findings of the departments requested to make such review shall then be delivered to the license division which shall take such action upon the license application as shall be appropriate.

12-1-7. Unlawful Conduct.

No sexual acts as prohibited by the laws of the State of Utah or the ordinances of Sandy City or any other immoral or unlawful act shall be performed by masseurs, massage establishment licensees or their employees. No massage shall be given in a locked room or enclosure. No cubicle, room or enclosure of a permanent nature shall be allowed within a massage establishment. Privacy curtains shall be permitted.

12-1-8. Health Standards.

When the Salt Lake City/County Board of Health has probable cause to believe that the examination of a masseur for communicable diseases is necessary for the health and safety of the masseur or the public, it may require a masseur to submit to a physical examination of a type to be determined by the Board of Health. All massage establishments must at all times meet the Salt Lake City/County Board of Health regulations.

12-1-9. Issuance of License.

Upon receipt of the reports and recommendations as prepared and required herein, the Business License Division shall refer such application to the Mayor. The Mayor shall, upon receipt of such application, reports and recommendations, determine whether or not a business license shall be issued to the applicant. Such determination shall be based upon the ordinances of Sandy City and the consideration of reports and recommendations as received.

12-1-10. Display of License.

Every massage establishment licensed under this chapter shall display, and every masseur licensed under this chapter shall display, its or his massage establishment license or masseur's license in a conspicuous place on the licensed premises together with a notice listing all persons employed on the premises.

12-1-11. Supervision of Massage Establishment.

Any establishment or person licensed under the provisions of this ordinance shall be supervised by a master massage therapist or master masseur, as herein defined. Such master massage therapist shall be required to conform to the standards of training and experience as outlined in the definitions herein and shall be responsible to assure that the licensed establishment conforms and continues to conform with the laws, ordinances and regulations of the City and the State of Utah. No massage establishment or masseur shall be licensed under the

provisions of this chapter unless the requirements regarding a master massage therapist or masseur shall have been fulfilled.

12-1-12. Revocation of License.

Any license issued under the provisions of this chapter may be revoked or suspended for the following reasons:

- (a) Upon a showing that a licensed massage establishment or masseur is not in compliance with the laws and ordinances of the City or State of Utah; or
- (b) Upon a showing that the licensed massage establishment or masseur has failed to maintain the premises upon which the business is operated in a condition of proper sanitation or hygiene; or
- (c) Upon a showing that the licensed massage establishment or masseur has submitted to the City falsified documents of application or an application containing a deliberate omission of pertinent facts or containing deliberate misrepresentation of such facts; or
- (d) Upon a finding that any licensed massage establishment is being operated or maintained or that any person is engaged in the pursuits of a masseur in violation of any law, ordinance or regulation.

The revocation or suspension of any license granted hereunder shall not be undertaken until a hearing and appeals therefrom shall have been conducted by and before the Mayor in conformance with the provisions contained elsewhere in these ordinances with regard to revocation or suspension of business licenses generally.

12-1-13. Renewal of Licenses.

Licenses issued under this chapter shall be valid, unless expired, revoked or suspended, for the current calendar year in which issued and shall expire on December 31st of each year. Renewal of any license issued hereunder shall be granted in the manner and upon the conditions for the renewal of business licenses generally.

12-1-14. Treatment of Persons of the Opposite Sex.

It shall be unlawful for any person to administer, for hire or reward to any person of the opposite sex, any massage, nor shall any person cause or permit in or about his place of business or in connection with his business, any agent, employee or servant or any other person to administer any massage to any person of the opposite sex.

This section shall not apply to any massage or treatment administered in good faith in the course of the practice of any healing art by any person licensed to practice any such art or profession under the provisions of the Utah Code Annotated, 1953, or of any other law of this state.

12-1-15. Modeling Prohibited.

No massage establishment or licensee shall allow masseurs or masseuses working in his establishment to model or pose for photographs, films, television, moving pictures, or drawings on the premises.

12-1-16. Appointment of Inspectors for the Purpose of Enforcement of this Chapter.

The departments of Fire, Health, Community Development, Police and Building and Safety shall designate members of their departments to act as inspectors of establishments required to be licensed by this chapter. Said establishments shall be open to inspection at reasonable times to the inspectors of each of the above departments for the purpose of investigation and enforcement of the applicable ordinances of Sandy City and the laws of the State of Utah.

12-1-17. Conformance to State Laws.

The operation of any massage establishment or the ability of any massage therapist or masseur to engage in such business within the limits of the City shall be governed by all applicable statutes, laws and regulations of a general nature which may be adopted or promulgated from time to time by the State of Utah and Salt Lake County.

12-1-18. Severability Clause.

If any part of this section or the application thereof to any person or circumstances, shall for any reason be adjudged by a court of competent jurisdiction to be unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remainder of this law or the application thereof to other persons and circumstances, but shall be confined in its operation to the section, subdivision, sentence or part of the section and the persons and the circumstances directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the City Council that this section would have been adopted if such invalid section, provisions, subdivision, sentence or part of the section or application had not been included.

12-1-19. Penalty.

Any violation of the provisions of this chapter shall be deemed a class B misdemeanor.

Chapter 2 SEXUALLY ORIENTED BUSINESS AND EMPLOYEE LICENSING ORDINANCE

12-2-1. Purpose and Findings.

(a) Purpose. It is the purpose of this ordinance to regulate sexually oriented businesses in order to promote the health, safety, and general welfare of the citizens of the City, and to establish reasonable and uniform regulations to prevent the deleterious secondary effects of sexually oriented businesses within the City. The provisions of this ordinance have neither the purpose nor effect of imposing a limitation or restriction on the content or reasonable access to any communicative materials, including sexually oriented materials. Similarly, it is neither the intent nor effect of this ordinance to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this ordinance to condone or legitimize the distribution of obscene material.

(b) Findings. Based on evidence of the adverse secondary effects of adult uses presented in hearings and in reports made available to the Council, and on findings, interpretations, and narrowing constructions incorporated in the cases of *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 2004 U.S. LEXIS 4026 (June 7, 2004); *City of Los Angeles v. Alameda Books, Inc.*, 535 U.S. 425 (2002); *Pap's A.M. v. City of Erie*, 529 U.S. 277 (2000); *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 426 U.S. 50 (1976), *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991); *California v. LaRue*, 409 U.S. 109 (1972); *O'Connor v. City and County of Denver*, 894 F.2d 1210 (10th Cir. 1990); *Z.J. Gifts D-2, L.L.C. v. City of Aurora*, 136 F.3d 683 (10th Cir. 1998); *Dodger's Bar & Grill, Inc. v. Johnson County*, 98 F.3d 1262 (10th Cir. 1996); *Connection Distrib. Co. v. Reno*, 154 F.3d 281 (6th Cir. 1998); *Sundance Assocs. v. Reno*, 139 F.3d 804 (10th Cir. 1998); *American Library Association v. Reno*, 33 F.3d 78 (D.C. Cir. 1994); *Dodger's Bar & Grill, Inc. v. Johnson County*, 32 F.3d 1436 (10th Cir. 1994); *American Target Advertising, Inc. v. Giani*, 199 F.3d 1241; *MS News Co. v. Casado*, 721 F.2d 1281 (10th Cir. 1983); *Cortese v. Black*, No. 95-1429, 1996 U.S. App. LEXIS 15311 (10th Cir., June 25, 1996); *Salt Lake City v. Wood*, 1999 Utah App. 323, 991 P.2d 595 (Utah Ct. App. 1999); *United States v. Freedberg*, 724 F.Supp. 851 (D. Utah 1989); and other cases; and on reports of secondary effects occurring in and around sexually oriented businesses, including, but not limited to, Chattanooga, Tennessee – 1999-2003; Phoenix, Arizona - 1979; Minneapolis, Minnesota-1980; Houston, Texas - 1997; Indianapolis, Indiana - 1984; Amarillo, Texas - 1977; Garden Grove, California - 1991; Los Angeles, California - 1977; Whittier, California - 1978; Austin, Texas - 1986; Seattle, Washington - 1989; Oklahoma City, Oklahoma - 1986; Cleveland, Ohio - 1977 ; and Dallas, Texas - 1997; St. Croix County, Wisconsin - 1993; Bellevue, Washington, - 1998; Newport News, Virginia - 1996; New York Times Square study - 1994; Phoenix, Arizona -1995-98; and also on findings of physical abuse from the paper entitled “Stripclubs According to Strippers: Exposing Workplace Sexual

Violence,” by Kelly Holsopple, Program Director, Freedom and Justice Center for Prostitution Resources, Minneapolis, Minnesota, and from “Sexually Oriented Businesses: An Insider’s View,” by David Sherman, presented to the Michigan House Committee on Ethics and Constitutional Law, Jan. 12, 2000, and the Report of the Attorney General’s Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota), the Council finds:

(1) Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on property values, urban blight, pornographic litter, and sexual assault and exploitation.

(2) Sexual acts, including masturbation, oral and anal sex, sometimes occur at unregulated sexually oriented businesses, especially those which provide private or semi-private booths, rooms, or cubicles for view films, videos, or live sexually explicit shows, which acts constitute a public nuisance and pose a risk to public health through the spread of sexually transmitted diseases.

(3) Each of the foregoing negative secondary effects constitutes a harm which the City has a substantial government interest in preventing and/or abating.

Section 12-2-2. Definitions.

For purposes of this chapter, the words and phrases defined in the sections hereunder shall have the meanings therein respectively ascribed to them unless a different meaning is clearly indicated by the context.

“Adult Bookstore / Adult Video Store” means a commercial establishment which has significant or substantial portion of its stock-in trade or derives a significant or substantial portion of its revenues or devotes a significant or substantial portion of its interior business or advertising, or maintains a substantial section of its sales or display space to the sale or rental, for any form of consideration, of any one or more of the following:

Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, compact discs, slides, or other visual representations which are characterized by their emphasis upon the exhibition or description of “specified sexual activities” or “specified anatomical areas.”

The term “Adult Bookstore / Adult Video Store” shall also include a commercial establishment which regularly maintains one or more “Adult Arcades.” “Adult Arcade” means any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are regularly maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by their emphasis upon matter exhibiting or describing “specified sexual activities” or specified “anatomical areas.”

“Adult Cabaret” means a nightclub, bar, juice bar, restaurant, bottle club, or similar commercial establishment, whether or not alcoholic beverages are served, which regularly features persons who appear semi-nude.

“Adult Motel” means a motel, hotel, or similar commercial establishment which:

(a) offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, other photographic reproductions, or live performances which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and which advertises the availability of such material by means of a sign visible from the public right-of-way, or by means of any on or off-premises advertising, including but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television; or

(b) offers a sleeping room for rent for a period of time that is less than 10 hours; or

(c) allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than 10 hours.

“Adult Motion Picture Theater” means a commercial establishment where films, motion pictures, videocassettes, slides, or similar photographic reproductions which are characterized by their emphasis upon the exhibition of “specified sexual activities” or “specified anatomical areas” are regularly featured and shown for any form of consideration. *“Adult Motion Picture Theater”* shall also include an *“Adult movie house.”* *“Adult movie house”* means any movie theater which on a regular, continuing basis shows films rated “X” by any national or international motion picture rating association, or any movie theater which on a regular, continuing basis shows films characterized by an emphasis upon the exhibition of “specified sexual activities” or “specified anatomical areas.”

“Distinguished or Characterized by an Emphasis Upon” means the dominant or principal theme of the object described by such phrase. For instance, when the phrase refers to films “which are distinguished or characterized by an emphasis upon the exhibition or description of Specified Sexual Activities or Specified Anatomical areas,” the films so described are those whose dominant or principal character and theme are the exhibition or description “specified anatomical areas” or “specified sexual activities.”

“Employ, Employee, and Employment” describe and pertain to any person who performs any service on the premises of a sexually oriented business, on a full time, part time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent, or otherwise. Employee does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

“Establish or Establishment” shall mean and include any of the following:

(a) The opening or commencement of any sexually oriented business as a new business;

(b) The conversion of an existing business, whether or not a sexually oriented

business, to any sexually oriented business; or

(c) The addition of any sexually oriented business to any other existing sexually oriented business.

“Hearing Officer” shall mean the Mayor of the City of Sandy City or a designee of the Mayor.

“Influential Interest” means any of the following: (1) the actual power, directly or indirectly, to control the operation, management or policies of a business or entity, (2) ownership of a financial interest of twenty percent (20%) or more of a business or of any class of voting securities of a business, or (3) holding an office (e.g., president, vice president, secretary, treasurer, etc.) in a legal entity which operates the sexually oriented business.

“Licensee” shall mean a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual or individuals listed as an applicant on the application for a sexually oriented business license. In case of an "employee," it shall mean the person in whose name the sexually oriented business employee license has been issued.

“Nudity or a State of Nudity” means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any part of the nipple and areola.

“Operate or Cause to Operate” shall mean to cause to function or to put or keep in a state of doing business. *“Operator”* means any persons on the premises of a sexually oriented business who is authorized to exercise overall operational control of the Business or who causes to function or who puts or keeps in operation the business. A person may be found to be operating or causing to be operated a sexually oriented business whether or not that person is an owner, part owner, or licensee of the business.

“Person” shall mean individual, proprietorship, partnership, corporation, association, or other legal entity.

“Regularly Features, Regularly Maintains, or Regularly Shown” means a consistent or substantial course of conduct, such that the films or performances exhibited constitute a substantial portion of the films or performances offered or held out to the public as a part of the ongoing business carried on within the premises.

“Semi-Nude or State of Semi-Nudity” means the showing of the female breast below a horizontal line across the top of the areola at its highest point, or the showing of the male or female buttocks. This definition shall not include any portion of the cleavage of the human female breasts regularly exhibited in public places by a dress, blouse, shirt, leotard, bathing suit, or similar wearing apparel.

“Semi-Nude Model Studio” means any place where a person, who regularly appears in a state of semi-nudity is provided for money or any form of consideration to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons.

It is a defense to prosecution for any violation of this ordinance that a person appearing in a state

of semi-nudity or semi-nudity did so in a modeling class operated:

By a college, junior college, or university supported entirely or partly by taxation;

(a) By a private college or university which maintains and operates educational programs in which credits are transferable to college, junior college, or university supported entirely or partly by taxation; or:

(b) In a structure:

(1) Which has no sign visible from the exterior of the structure and no other advertising that indicates a semi-nude person is available for viewing; and

(2) Where, in order to participate in a class a student must enroll at least three days in advance of the class.

“*Sexual encounter center*” shall mean a business or commercial enterprise that, as one of its principal business purposes, purports to offer for any form of consideration:

(a) physical contact in the form of wrestling or tumbling between persons of the opposite sex; or

(b) physical contact between male and female persons and/or persons of the same sex when one or more of the persons is semi-nude.

“*Sexually Oriented Entertainment Activity*” means the sale, rental, or exhibition for any form of consideration, of books, films, video cassettes, magazines, periodicals, or live performances which are characterized by an emphasis on the exposure or display of specific sexual activity.

“*Specified Anatomical Areas*” means and includes:

(a) Less than completely and opaquely covered: human genitals, pubic region; buttock; and female breast below a point immediately above the top of the areola; and

(b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

“*Specified Criminal Activity*” means any of the following offenses under Utah law:

(a) prostitution or promotion of prostitution; dissemination of obscenity or illegal pornography; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; lewdness; sexual battery; rape; indecent exposure; indecency with a child; engaging in organized criminal activity relating to a sexually oriented business; sexual assault; molestation of a child; or distribution of a controlled substance; criminal attempt, conspiracy or solicitation to commit any of the foregoing offenses or offenses; or offenses in other jurisdictions that, had the predicate act(s) been committed in Utah, would have constituted any of the foregoing offenses; for which less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date.

(b) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant, provided that, a conviction that is reversed on appeal shall no longer thereafter constitute a “specified criminal activity” hereunder.

“*Specified Sexual Activity*” means any of the following:

(a) sex acts, normal or perverted, including intercourse, oral copulation, masturbation or sodomy; or

(b) excretory functions as a part of or in connection with any of the activities described in (a) above.

“*Transfer of Ownership or Control*” of a sexually oriented business shall mean any of the following:

(a) The sale, lease, or sublease of the business;

(b) The transfer of securities which constitute an influential interest in the business, whether by sale, exchange, or similar means; or

(c) The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

“*Viewing Room*” shall mean the room, booth, or area where a patron of sexually oriented business would ordinarily be positioned while watching a film, videocassette, or other video reproduction.

Section 12-2-3. Classification.

Sexually oriented businesses shall be classified as follows:

(a) Adult bookstores / adult video stores;

(b) Adult cabarets;

(c) Adult motels;

(d) Adult motion picture theaters;

(e) Adult novelty stores;

(f) Semi-nude model studios.

Section 12-2-4. License required.

(a) It shall be unlawful for any person to operate a sexually oriented business in the City of Sandy City without a valid sexually oriented business license.

(b) It shall be unlawful for any person to be an “employee,” as defined in this Chapter, of a sexually oriented business in the City of Sandy City without a valid sexually

oriented business employee license.

(c) An applicant for a sexually oriented business license or a sexually oriented business employee license shall file in person at the office of the Business License Officer a completed application made on a form provided by the Business License Officer. The application shall be signed as required by subsection (e) herein and shall be notarized. An application shall be considered complete when it contains, for each person required to sign the application, the information required in Paragraphs 1 through 7 as follows:

(1) The applicant's full true name and any other names used by the applicants in the preceding five (5) years.

(2) Current business address or another mailing address of the applicant.

(3) Written proof of age, in the form of a copy of a birth certificate and a picture identification document issued by a governmental agency.

(4) If the application is for a sexually oriented business license, the business name, location, legal description, mailing address and phone number of the sexually oriented business.

(5) If the application is for a sexually oriented business license, the name and business address of the statutory agent or other agent authorized to receive service of process.

(6) A statement of whether the applicant has been convicted or has pled guilty or nolo contendere to a specified criminal activity as defined in this ordinance, and if so, the specified criminal activity involved, including the date, place, and jurisdiction of each as well as the dates of conviction and release from confinement, where applicable.

(7) A statement of whether the applicant, or any business in which the applicant has had an influential interest, has, in the previous five (5) years:

(A) had a license or permit revoked under this ordinance or under a similar sexually oriented business / adult entertainment ordinance in another jurisdiction; or

(B) been declared by a court of law to be a nuisance; or

(C) been subject to an order of closure or padlocking.

The information provided pursuant to Paragraphs 1 through 7 of this subsection shall be supplemented in writing by certified mail, return receipt requested, to the Business License Officer within ten (10) working days of a change of circumstances which would render the information originally submitted false or incomplete.

(d) An application for a sexually oriented business license shall be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but shall be drawn to a designated scale or drawn with marked dimensions of the interior of the

premises to an accuracy of plus or minus six (6) inches. Applicants who are required to comply with Sections 12-2-14 and 12-2-18 of this chapter shall submit a diagram indicating that the premises meets the requirements of those sections.

(e) If a person who wishes to operate a sexually oriented business is an individual, he shall sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual, each person with an influential interest in the business, and each officer, director, general partner or other person who will participate directly in decisions relating to management and control of the business shall sign the application for a license as applicant. Each applicant must be qualified under Section 5 and each applicant shall be considered a licensee if a license is granted.

(f) The information provided by an applicant in connection with an application for a license under this chapter shall be maintained by the Business License Officer on a confidential basis, except that such information may be disclosed only to law enforcement agencies in connection with a law enforcement or public safety function, or as may be required by governing law or court order.

Section 12-2-5. Issuance of license.

(a) Within twenty (20) days of the filing date of a completed sexually oriented business license application, the Business License Officer shall issue a license to the applicant or issue to the applicant a letter of intent to deny the application. The Business License Officer shall issue a license unless one or more of the following is found to be true:

(1) An applicant is less than eighteen (18) years of age.

(2) An applicant has failed to provide information as required by Section 12-2-4 for issuance of a license or has falsely answered a question or request for information on the application form.

(3) The license application fee required by this Chapter has not been paid.

(4) The sexually oriented business, as defined herein, is not in compliance with the interior configuration requirements of this Chapter or is not in compliance with locational requirements of this ordinance or the Sandy City Code.

(5) An applicant, or any business in which the applicant has had an influential interest, has, in the previous five (5) years:

(A) had a license or permit suspended or revoked under this ordinance or under a similar sexually oriented business / adult entertainment ordinance in another jurisdiction; or

(B) been declared by a court of law to be a nuisance; or

(C) been subject to an order of closure or padlocking.

(6) An applicant has been convicted of or pled guilty or nolo contendere to a

specified criminal activity, as defined in this ordinance.

(b) Within twenty (20) days of the filing date of a completed sexually oriented business employee license application, the Business License Officer shall either issue a license or issue a written notice of intent to deny a license to the applicant. The Business License Officer shall approve the issuance of a license unless one or more of the following is found to be true.

(1) The applicant is less than eighteen (18) years of age.

(2) The applicant has failed to provide information as required by Section 12-2-4 for issuance of a license or has falsely answered a question or request for information on the application form.

(3) The license application fee required by this Chapter has not been paid.

(4) The applicant, or any business in which the applicant has had an influential interest, has, in the previous five (5) years:

(A) had a license or permit suspended or revoked under this ordinance or under a similar sexually oriented business / adult entertainment ordinance in another jurisdiction; or

(B) been declared by a court of law to be a nuisance; or

(C) been subject to an order of closure or padlocking.

(5) The applicant has been convicted of or pled guilty or nolo contender to a specified criminal activity, as defined in this ordinance.

(c) The license, if granted, shall state on its face the name of the person or persons to whom it is granted, the number of the license issued to the licensee(s), the expiration date, and, if the license is for a sexually oriented business, the address of the sexually oriented business. The sexually oriented business license shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that it may be easily read at any time. A sexually oriented business employee shall keep the employee's license on his or her person or on the premises where the licensee is then working or performing and shall produce such license for inspection upon reasonable request by a law enforcement officer or other City official performing functions connected with the enforcement of this Chapter.

Section 12-2-6. Fees.

The initial license and annual renewal fees for sexually oriented business licenses and sexually oriented business employee licenses shall be as set by resolution passed by the Sandy City Council.

Section 12-2-7. Inspection.

(a) Sexually oriented businesses and sexually oriented business employees shall

permit officers or agents of the City of Sandy City to inspect, from time to time on an occasional basis, the portions of the sexually oriented business premises where patrons are permitted, for the purpose of ensuring compliance with the specific regulations of this Chapter, during those times when the sexually oriented business is occupied by patrons or is open for business. A licensee's knowing or intentional refusal to permit such an inspection shall not constitute a misdemeanor, but shall constitute a violation of this section for purposes of license denial, suspension, and/or revocation. This section shall be narrowly construed by the City to authorize reasonable inspections of the licensed premises pursuant to this chapter, but not to authorize a harassing or excessive pattern of inspections.

(b) The provisions of this Section do not apply to areas of an adult motel which are currently being rented by a customer for use as a permanent or temporary habitation.

Section 12-2-8. Expiration of license.

(a) Each license shall remain valid for a period of one calendar year from the date of issuance unless otherwise suspended or revoked. Such license may be renewed only by making application and payment of a fee as provided in Section 12-2-4 and Section 12-2-6.

(b) Application for renewal should be made at least ninety (90) days before the expiration date, and when made less than ninety (90) days before the expiration date, the expiration of the license will not be affected.

Section 12-2-9. Suspension.

(a) The City shall issue a written letter of intent to suspend a sexually oriented business license for a period not to exceed thirty (30) days if the sexually oriented business licensee has knowingly violated this chapter or has knowingly allowed an employee to violate this Chapter.

(b) The City shall issue a written letter of intent to suspend a sexually oriented business employee license if it is determined that the employee has knowingly violated this Chapter.

Section 12-2-10. Revocation.

(a) The City shall issue a letter of intent to revoke a sexually oriented business license or a sexually oriented business employee license if the licensee commits two or more causes of suspension in Section 12-2-9 within a twelve-month (12-mo.) period.

(b) The City shall issue written intent to revoke a sexually oriented business license or a sexually oriented business employee license, as applicable, if the Business License Officer determines that:

(1) The licensee has knowingly given false information in the application for the sexually oriented business license.

(2) The licensee has knowingly or recklessly engaged in or allowed

possession, use, or sale of controlled substances on the premises;

(3) The licensee has knowingly or recklessly engaged in or allowed prostitution on the premises;

(4) The licensee knowingly or recklessly operated the sexually oriented business during a period of time when the license was suspended;

(5) The licensee has knowingly or recklessly engaged in or allowed any specified sexual activity to occur in or on the licensed premises;

(c) The fact that any relevant conviction is being appealed shall have no effect on the revocation of the license, provided that, if any conviction which serves as a basis of a license revocation is overturned on appeal, that conviction shall be treated as null and of no effect for revocation purposes.

(d) Nature of Revocation. When, after the notice and hearing procedure described in Section 11, the Hearing Officer revokes a license, the revocation shall continue for two (2) years and the licensee shall not be issued a sexually oriented business license or sexually oriented business employee license for two (2) years from the date revocation becomes effective.

Section 12-2-11. Hearing; denial, revocation, and suspension; Appeal.

(a) If the Business License Officer determines that facts exist for denial, suspension, or revocation of a license under this chapter, the City shall notify the applicant or licensee (respondent) in writing of the intent to deny, suspend or revoke the license, including the grounds thereof, by personal delivery, or by certified mail. The notification shall be directed to the most current business address or other mailing address on file with the Business License Officer for the respondent. Within ten (10) working days of receipt of such notice, the respondent may provide to the Business License Officer a written response that shall include a statement of reasons why the respondent believes the license should not be denied, suspended, or revoked.

Within five (5) days of the receipt of respondent's written response, the Business License Officer shall notify respondent in writing of the hearing date on respondent's denial, suspension, or revocation proceeding. Within ten (10) working days of the receipt of respondent's written response, the Hearing Officer shall conduct a hearing at which respondent shall have the opportunity to present all of respondent's arguments and to be represented by counsel, present evidence and witnesses on his or her behalf, and cross-examine any of the City's witnesses. The City shall also be represented by counsel, and shall bear the burden of proving the grounds for deny, suspending, or revoking the license. The hearing shall take no longer than two (2) days, unless extended to meet the requirements of due process and proper administration of justice. The Hearing Officer shall issue a written opinion within five (5) days after the hearing.

If a court action challenging the City's decision is initiated, the City shall prepare and transmit to the court a transcript of the hearing within ten (10) days after the issuance of the Hearing Officer's written opinion. If a response is not received by the Business License Officer in the time stated or, if after the hearing the Hearing Officer finds that grounds as specified in

this Ordinance exist for denial, suspension, or revocation, then such denial, suspension, or revocation shall become final five (5) days after the Hearing Officer sends, by certified mail, written notice to the respondent that the license has been denied, suspended, or revoked. Such notice shall include a statement advising the respondent of the right to appeal such decision to a court of competent jurisdiction. If the Hearing Officer finds that no grounds exist for denial, suspension, or revocation of a license, then within five (5) days after the hearing, the Hearing Officer shall order the Business License Officer to immediately withdraw the intent to deny, suspend, or revoke the license and to notify the respondent in writing by certified mail of such action. The Business License Officer shall contemporaneously therewith issue the license to the applicant.

(b) When a decision to deny, suspend or revoke a license becomes final, the applicant or licensee (aggrieved party) whose application for a license has been denied or whose license has been suspended or revoked shall have the right to appeal or challenge such action to any court of competent jurisdiction by filing an original action, petition for certiorari, or petition for mandamus. The City will consent to expedited briefing and/or disposition of the action, shall comply with any expedited schedule set by the Court, and shall facilitate prompt judicial review of the proceedings.

Section 12-2-12. Transfer of license.

A licensee shall not transfer his or her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the sexually oriented business license application.

Section 12-2-13. Hours of operation.

No sexually oriented business shall be or remain open for business between 12:00 midnight and 6:00 a.m. on any day, a sexually oriented business which has obtained a license to sell alcoholic beverages from the State of Utah may remain open to sell alcoholic beverages under the terms of that license, but may not conduct sexually oriented entertainment activity after 12:00 midnight.

Section 12-2-14. Regulations for exhibiting sexually explicit films or videos.

(a) A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, or other video reproduction characterized by an emphasis on the display of specified sexual activities or specified anatomical areas shall comply with the following requirements.

(1) Each application for a sexually oriented business license shall contain a diagram of the premises showing the location of all manager's stations, viewing rooms, overhead lighting fixtures, videocameras and monitors installed for monitoring purposes and restrooms, and shall designate all portions of the premises in which patrons will not be permitted. Restrooms shall not contain video reproduction equipment. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared

diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram shall be oriented to the north or to some designated street or object and shall be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six inches. The Business License Officer may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.

(2) The application shall be sworn to be true and correct by the applicant.

(3) No alteration in the configuration or location of a manager's station or viewing room may be made without the prior approval of the Business License Officer.

(4) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to Paragraph 1 of this subsection.

(5) The interior premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot candles as measured at the floor level. It shall be the duty of the operator, and of any employees present on the premises, to ensure that the illumination described above is maintained at all times that the premises is occupied by patrons or open for business.

(6) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no sexual activity occurs in or on the licensed premises.

(7) It shall be the duty of the operator, and of any employees present on the premises, to ensure that not more than one person is present in a viewing room at any time. No person shall enter a viewing room that is occupied by another person.

(8) It shall be the duty of the operator, and of any employees present on the premises, to ensure that no openings of any kind exist between viewing rooms. No person shall make an attempt to make an opening of any kind between viewing rooms.

(9) It shall be the duty of the operator, or of any employee who discovers two or more patrons in a viewing room or discovers any person making or attempting to make an opening of any kind between viewing rooms, to immediately escort such persons from the premises.

(10) It shall be the duty of the operator, or of any employee, who discovers an opening of any kind between viewing rooms to immediately secure such rooms, and prevent entry into them by any patron until such time as the wall between the rooms has been repaired to remove the opening. Removal and repairing openings between viewing rooms shall be in a manner that is as structurally substantial as the original wall construction.

(11) It shall be the duty of the operator, at least once each business day, to

inspect the walls between viewing rooms for openings of any kind, documented by appropriate logs.

(12) It shall be the duty of the operator to post conspicuous signs in well-lighted entry areas of the business stating all of the following:

- (A) That no loitering is permitted in viewing rooms.
- (B) That the occupancy of viewing rooms is limited to one person.
- (C) That sexual activity on the premises is prohibited.
- (D) That the making of openings between viewing rooms is prohibited.
- (E) That violators will be required to leave the premises.
- (F) That violations of Subparagraphs (B), (C) and (D) of this paragraph are unlawful.

(13) It shall be the duty of the operator to ensure that floor coverings in viewing rooms are nonporous, easily cleanable surfaces, with no rugs or carpeting.

(14) It shall be the duty of the operator to ensure that all wall surfaces and seating surfaces in viewing rooms are constructed of or permanently covered by nonporous easily cleanable material.

(15) It shall be the duty of the operator to ensure that premises are clean and sanitary. Such duty shall be fulfilled if the operator complies with the following cleaning procedures:

(A) The operator shall maintain a regular cleaning schedule of at least two cleanings per day, documented by appropriate logs.

(B) The operator shall provide an employee to check all areas for garbage, trash, body fluids and excrement and to remove and clean all areas with a disinfectant. All solid waste generated by the business shall be collected from the premises for disposal at a lawful solid waste disposal facility at least twice each week. Prior to collection solid waste shall be stored in a manner that prevents access by animals or members of the public and which will not facilitate the creation of a health nuisance.

(C) Thorough cleaning of the entire interior of any room providing patron privacy shall be done using a disinfectant. Cleaning shall include floors, walls, doors, seating, monitors, video cameras, and windows and other surfaces.

(16) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises, including the interior of each viewing room but excluding restrooms, to which any patron is permitted access for any purpose. A manager's station shall not exceed thirty-two (32) square feet of floor area. If the premises has two (2) or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of

the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this paragraph must be by direct line of sight from the manager's station. It is the duty of the operator to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is on the premises. It shall be the duty of the operator, and it shall also be the duty of any employees present on the premises, to ensure that the view area specified in this paragraph remains unobstructed by any doors, curtains, walls, merchandise, display racks or other materials or enclosures at all times that any patron is present on the premises.

(17) It shall be the duty of the operator or manager of the business to ensure that no sexually oriented entertainment activity or visual depictions characterized by an emphasis on actual "specified anatomical areas" or "specified sexual activities" are visible from a public right of way adjacent to the establishment.

(b) It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

Section 12-2-15. Loitering, exterior lighting, visibility, and monitoring requirements.

(a) It shall be the duty of the operator of a sexually oriented business to:

(1) post conspicuous signs stating that no loitering is permitted on such property;

(2) designate one or more employees to monitor the activities of persons on such property by visually inspecting such property at least once every ninety (90) minutes or inspecting such property by use of video cameras and monitors; and

(3) provide lighting of the exterior premises to provide for visual inspection or video monitoring to prohibit loitering. If used, video cameras and monitors shall operate continuously at all times that the premises are open for business. The monitors shall be installed within a manager's station.

(b) It shall be unlawful for a person having a duty under this section to knowingly fail to fulfill that duty.

(c) No sexually oriented business shall erect a fence, wall, or other barrier that prevents any portion of the parking lot(s) for the establishment from being visible from a public right of way.

Section 12-2-16. Penalties and enforcement.

In addition to revocation or suspension of a license, as provided in this chapter, the violation of any provision of this chapter shall be a class B misdemeanor. Each day of violation shall be considered a separate offense.

Section 12-2-17. Applicability of ordinance to existing businesses.

The provisions of this Ordinance shall apply to the activities of all sexually oriented

businesses and sexually oriented business employees described herein, whether such businesses or activities were established or commenced before, on, or after the effective date of this ordinance. All existing sexually oriented businesses and sexually oriented business employees are hereby granted a *De Facto* Temporary License to continue operation or employment for a period of thirty (30) days following the effective date of this ordinance. Within said 30 days, all sexually oriented businesses and sexually oriented business employees must make application for a license pursuant to this Chapter.

Section 12-2-18. Prohibited activities.

It is unlawful for a sexually oriented business to knowingly violate the following regulations or to knowingly allow an employee or any other person to violate the following regulations.

(a) It shall be a violation of this Chapter for a patron, employee, or any other person to knowingly or intentionally, in a sexually oriented business, appear in a state of nudity, regardless of whether such public nudity is expressive in nature.

(b) It shall be a violation of this Chapter for a person to knowingly or intentionally, in a sexually oriented business, appear in a semi-nude condition unless the person is an employee who, while semi-nude, remains at least six (6) feet from any patron or customer and on a stage at least eighteen (18) inches from the floor in a room of at least one thousand (1,000) square feet.

(c) It shall be a violation of this Chapter for any employee who regularly appears semi-nude in a sexually oriented business to knowingly or intentionally touch a customer or the clothing of a customer on the premises of a sexually oriented business.

(d) It shall be a violation of this Chapter for any person to sell, use, or consume alcoholic beverages on the premises of a sexually oriented business.

A sign in a form to be prescribed by the Business License Officer and summarizing the provisions of Paragraphs (a), (b), (c), and (d) of this Section, shall be posted near the entrance of the sexually oriented business in such a manner as to be clearly visible to patrons upon entry.

Section 12-2-19. Scierter required to prove violation or business licensee liability.

Unless a culpable mental state is otherwise specified herein, a showing of a knowing or reckless act is necessary to establish a violation of a provision of this ordinance.

Notwithstanding anything to the contrary, for the purposes of this ordinance, an act by an employee that constitutes grounds for suspension or revocation of that employee's license shall be imputed to the sexually oriented business licensee for purposes of finding a violation of this ordinance, or for purposes of license denial, suspension, or revocation, only if an officer, director, or general partner, or a person who managed, supervised, or controlled the operation of the business premises, knowingly or recklessly allowed such act to occur on the premises. It shall be a defense to liability that the person to whom liability is imputed was powerless to prevent the act.

Section 12-2-20. Failure of city to meet time frame not to risk applicant/licensee rights.

In the event that a City official is required to take an act or do a thing pursuant to this ordinance within a prescribed time, and fails to take such act or do such thing within the time prescribed, said failure shall not prevent the exercise of constitutional rights of an applicant or licensee. If the act required of the City under this ordinance is not completed in the time prescribed, includes approval of condition(s) necessary for approval by the City of an applicant or licensee's application for sexually oriented business license or a sexually oriented business employee's license (including a renewal), the applicant or licensee shall be deemed granted and the business or employee allowed to commence operations or employment the day after the deadline for the City's action has passed.

Section 12-2-21. Severability.

This ordinance and each section and provision of said chapter hereunder, are hereby declared to be independent divisions and subdivisions and, notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provisions of said chapter, or the application thereof to any person or circumstance is held to be invalid, the remaining sections or provisions and the application of such sections and provisions to any person or circumstances other than those to which it is held invalid, shall not be affected thereby, and it is hereby declared that such sections and provisions would have been passed independently of such section or provision so known to be invalid. Should any procedural aspect of this ordinance be invalidated, such invalidation shall not effect the enforceability of the substantive aspects of this ordinance.

Section 12-2-22. Conflicting code provisions repealed.

Any provision(s) in the Sandy City Code specifically in conflict with any provision in this ordinance is hereby deemed inoperative and repealed, to the extent that said provision(s) would prevent the operation of the specific provision(s) in this ordinance.

Chapter 3 PORNOGRAPHY AND OBSCENITY

12-3-1. Definitions.

For the purpose of this part:

- (a) "Material" means anything printed or written on any picture, drawing, photograph, motion picture, or pictorial representation, or any statue or other figure, or any recording or transcription, or any mechanical, chemical, or electrical reproduction, or anything which is or may be used as a means of communication. Material includes undeveloped photographs, molds, printing plates, and other latent representational objects.

- (b) "Performance" means any physical human bodily activity, whether engaged in alone or with other persons, including but not limited to singing, speaking, dancing, acting, simulating, or pantomiming.
- (c) "Distribute" means to transfer possession of materials whether with or without consideration.
- (d) "Knowingly" means an awareness, whether actual or constructive, of the character of material or of a performance. A person has constructive knowledge if a reasonable inspection under the circumstances would have disclosed the nature of the subject matter and if a failure to inspect or observe is either for the purpose of avoiding the disclosure or is criminally negligent.
- (e) "Exhibit" means to show.
- (f) "Nudity" means the showing of the human male or female genitals, pubic area, or buttocks, with less than an opaque covering, or the showing of a female breast with less than an opaque covering, or any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.
- (g) "Sexual conduct" means acts of masturbation, sexual intercourse, or any touching of a person's clothed or unclothed genitals, pubic area, buttocks, or, if the person is a female, breast whether alone or between members of the same or opposite sex or between humans or animals in an act of apparent or actual sexual stimulation or gratification.
- (h) "Sado-masochistic abuse" means flagellation or torture by or upon a person who is nude or clad in undergarments, a mask, or in a revealing or bizarre costume, or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.
- (i) "Minor" means any person less than eighteen years of age.
- (j) "Harmful to minors" means that quality of any description or representation, in whatsoever form, of nudity, sexual conduct, sexual excitement, or sado-masochistic abuse when it:
 - (1) Taken as a whole, appeals to the prurient interest of sex in minors;
 - (2) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
 - (3) Taken as a whole, does not have serious value for minors. Serious value includes only serious literary, artistic, political or scientific value for minors.
- (k) "Contemporary community standards" means those current standards in the vicinage where an offense alleged under this act has occurred, is occurring, or will occur.

- (l) "Public place" includes a place to which admission is gained by payment of a membership or admission fee, however designated, notwithstanding its being designated a private club or by words of like import.
- (m) "City" shall mean Sandy City Corporation.

12-3-2. Pornographic Material or Performance -- Expert Not Required.

- (a) Any material or performance is pornographic if:
 - (1) The average person, applying contemporary community standards, finds that, taken as a whole, it appeals to prurient interest in sex;
 - (2) It is patently offensive in the description or depiction of nudity, sexual conduct, sexual excitement, sado-masochistic abuse, or excretion; and
 - (3) Taken as a whole it does not have serious literary, artistic, political or scientific value.
- (b) In prosecutions under this part, where circumstances of production, presentation, sale, dissemination, distribution, exhibition, or publicity indicate that the matter is being commercially exploited by the defendant for the sake of its prurient appeal, this evidence is probative with respect to the nature of the matter and can justify the conclusion that, in the context in which it is used, the matter has no serious literary, artistic, political or scientific value.
- (c) Neither the prosecution nor the defense shall be required to introduce expert witness testimony as to whether the material or performance is or is not harmful to adults or minors or is or is not pornographic, or as to any element of the definition of pornographic, including contemporary community standards.

12-3-3. Distributing Pornographic Material.

- (a) A person is guilty of distributing pornographic material when he knowingly:
 - (1) Sends or brings any pornographic material into the City with intent to distribute or exhibit it to others; or
 - (2) Prepares, publishes, prints, or possesses any pornographic material with intent to distribute or exhibit it to others; or
 - (3) Distributes or offers to distribute, exhibits or offers to exhibit, any pornographic material to others; or
 - (4) Writes, creates, or solicits the publication or advertising of pornographic material; or
 - (5) Promotes the distribution or exhibition of material which he represents to be pornographic; or

- (6) Presents or directs a pornographic performance in any public place or any place exposed to public view or participates in that portion thereof which makes it pornographic.

Each distribution of pornographic material, as defined in this subsection

- (a) is a separate offense under this section. A separate offense shall be regarded as having been committed for each day's exhibition of any pornographic motion picture film and for each day in which any pornographic publication is displayed or exhibited in a public place with intent to distribute or exhibit it to others.
- (b) Each separate offense under this section is a misdemeanor punishable by a minimum mandatory fine of not less than \$100 plus \$10 for each article exhibited up to the maximum allowed by law and by incarceration without suspension of sentence in any way, for a term of not less than seven (7) days, notwithstanding any provisions of Utah Code Annotated, Section 77-35-17 (1953, as amended), or statutes amendatory thereof.

12-3-4. Inducing Acceptance of Pornographic Material.

- (a) A person is guilty of inducing acceptance of pornographic material when he knowingly:
 - (1) Requires or demands a condition to a sale, allocation, consignment, or delivery for resale of any newspaper, magazine, periodical, book, publication, or other merchandise that the purchaser or consignee receive any pornographic material or material reasonably believed by the purchaser or consignee to be pornographic; or
 - (2) Denies, revokes, or threatens to deny or revoke a franchise, or to impose any penalty, financial or otherwise, because of the failure or refusal to accept pornographic material or material reasonably believed by the purchaser or consignee to be pornographic.
- (b) A violation of this section is a misdemeanor punishable by a fine of not less than \$200 and by incarceration, without suspension of sentence in any way, for a term of not less than 14 days, notwithstanding any provisions of Utah Code Annotated, Section 77-35-17 (1953, as amended), or statutes amendatory thereof.

12-3-5. Dealing in Material Harmful to a Minor.

- (a) A person is guilty of dealing in harmful material when, knowing that a person is a minor, or having failed to exercise reasonable in ascertaining the proper age of a minor, he:
 - (1) Knowingly distributes or offers to distribute, exhibits or offers to exhibit, any

harmful material to a minor; or

- (2) Produces, presents or directs any performance before a minor, harmful to minors, or participates in any performance before a minor, harmful to minors; or
 - (3) Pretends to be the parent or legal guardian of a minor and thereby causes the minor to be admitted to an exhibition of any harmful material.
- (b) Each separate offense under this section is a misdemeanor punishable by a minimum mandatory fine of not less than \$200 plus \$10 for each article exhibited up to the maximum allowed by law and by incarceration, without suspension of sentence in any way, for a term of not less than fourteen (14) days, notwithstanding any provision of Utah Code Annotated, Section 77-35-17 (1953, as amended), or statutes amendatory thereof.

**12-3-6. Use of Real Property by Tenant or Occupant -- Voiding of Lease
 -- Allowance of Such Use by Owner or Lessor.**

- (a) If a tenant or occupant of real property uses the property for an activity for which he or his employee is convicted under any provision of this part, the conviction makes void the lease or other title under which he holds at the option of the fee owner or any intermediate lessor; and ten (10) days after the fee owner or any immediate lessor gives notice in writing to the tenant or occupant that he is exercising the option, the right of possession to the property reverts in the person exercising the option. This option does not arise until all avenues of direct appeal from the conviction have been exhausted or abandoned by the tenant or occupant, or his employee.
- (b) It shall be unlawful for a fee owner or intermediate lessor of real property to knowingly allow this property to be used for the purpose of distributing or exhibiting pornographic materials, or for pornographic performances, by a tenant or occupant if the tenant or occupant, or his employee, has been convicted under any provision of this part and all avenues of direct appeal from the conviction have been exhausted or abandoned.
 - (1) "Allow" under this subsection (b) means a failure to exercise the option in subsection (a) within ten (10) days after the fee owner or lessor receives notice in writing from the City Attorney that the property is being used for a purpose prohibited by this subsection (b).
 - (2) A willful violation of this subsection (b) is a misdemeanor and any fine assessed, if not paid within thirty (30) days after judgment, shall become a lien upon the property.
- (c) Any tenant or occupant who receives a notice in writing that the fee owner or intermediate lessor is exercising the option provided by subsection (a) and who

does not quit the premises within ten (10) days after the giving of that notice is guilty of a misdemeanor.

12-3-7. Affirmative Defenses.

- (a) It is an affirmative defense to prosecution under this part that the distribution of pornographic material was restricted to institutions or persons having scientific, educational, governmental, or other similar justification for possessing pornographic material.
- (b) It is not a defense to prosecution under this part that the actor was a motion picture projectionist, usher, ticket-taker, bookstore employee or otherwise was required to violate any provision of this part incident to his employment.

12-3-8. Injunctive Relief -- Jurisdiction -- Consent to Sued --Service of Process.

- (a) The Circuit Court shall have full power, authority and jurisdiction, upon application by the City Attorney, to issue any and all proper restraining orders, preliminary and permanent injunctions, and any other writs and processes appropriate and lawful to carry out and enforce the provisions of this part. No restraining order or injunction, however, shall issue except upon notice to the person sought to be enjoined. That person shall be entitled to a trial of the issues commencing within three (3) days after filing of any answer to the complaint and a decision shall be rendered by the Court within two (2) days after the conclusion of the trial. If a final order or judgment of injunction is entered against the person sought to be enjoined, this final order or judgment shall contain a provision directing the person to surrender to the Chief of Police of Sandy City any pornographic material in his possession which is subject to the injunction; and the Police Chief shall be directed to seize and destroy this material.
- (b) Any person not qualified to do business in the City who sends or brings any pornographic material into the City with the intent to distribute or exhibit it to others in this City thereby consents that he may be sued in any proceedings commenced under this section and therefor appoints the City Recorder to be the agent upon whom may be served all legal process against that person. Service of process shall be made by serving a copy of same upon the City Recorder or by filing the copy in his office, together with payment of a fee of \$2; and this service shall be sufficient service upon the defendant if:
 - (1) Notice of the service and a copy of the process are within ten (10) days thereafter sent by mail by the prosecuting attorney to the defendant at the address of the defendant that appears on any material exhibited or distributed and if no address appears, then the last known address of the defendant; and
 - (2) The prosecuting attorney's affidavit of compliance with the provisions of this subsection are attached to the summons. The City Recorder shall keep a

record of all the process served upon him under this section, showing the day and hour of the service. Nothing in this subsection shall be construed to limit the operation of Rule 17(e) of the Utah Rules of Civil Procedure.

- (c) This section shall not be construed in any way to limit the Circuit Court in the exercise of its jurisdiction under any other provision of law.

12-3-9. Search and Seizure -- Affidavit -- Issuance of Warrant -- Hearing upon Claim that Material Seized not Pornographic -- Procedures Cumulative.

- (a) An affidavit for a search warrant shall be filed with the magistrate describing with specificity the material sought to be seized. Where practical, the material alleged to be pornographic shall be attached to the affidavit for search warrant so as to afford the magistrate the opportunity to examine this material.
- (b) Upon the filing of an affidavit for a search warrant, the magistrate shall determine, by examination of the material sought to be seized, if attached or by examination of the affidavit describing the material, or by such other manner or means that he deems necessary, whether probable cause exists for the immediate issuance of a search warrant. Upon making this determination, he shall issue a search warrant ordering the seizure of the material described in the affidavit for a search warrant according to the provisions of the Utah Rules of Criminal Procedure.
- (c) In the event that a search warrant is issued and material alleged to be pornographic is seized under the provisions of this section, any person claiming to be in possession of this material or claiming ownership of it at the time of its seizure may file a notice in writing with the magistrate within ten (10) days after the date of the seizure, alleging that the material is not pornographic. The magistrate shall set a hearing within seven (7) days after the filing of this notice, or at such other time as the claimant might agree. At this hearing, evidence may be presented as to whether there is probable cause to believe the material seized is pornographic, and at the conclusion of the hearing the magistrate shall make a further determination of whether probable cause exists to believe that the material is pornographic. A decision as to whether there is probable cause to believe the seized material is pornographic shall be rendered by the court within two (2) days after the conclusion of the hearing. If at the hearing the magistrate finds that no probable cause exists to believe that the material is pornographic, then the material shall be returned to the person or persons from whom it was seized. If the material seized is a film, and the claimant demonstrates that no other copy of the film is available to him, the Court shall allow the film to be copied at the claimant's expense pending the hearing.
- (d) If a motion to suppress the evidence is granted on the grounds of an unlawful seizure, the property shall be restored unless it is subject to confiscation as

contraband, in which case it shall not be returned.

- (e) Procedures under this section for the seizure of allegedly pornographic material shall be cumulative of all other lawful means of obtaining evidence as provided by the laws of this State. Nothing contained in this section shall prevent the obtaining of allegedly pornographic material by purchase, subpoena duces tecum, or under proceedings as authorized by this act or by other provisions of law of the State of Utah.

12-3-10. Corporate Defenders -- Summons -- Subpoena Duces Tecum.

The attendance in court of a corporation for purposes of commencing or prosecuting a criminal action against it under this part may be accomplished by the issuance and service of a summons. A summons shall be issued by a magistrate if he finds probable cause that material in the possession of the corporation against which the summons is sought is pornographic, which finding shall be upon affidavit describing with specificity the material alleged to be pornographic or in such other manner or means the magistrate deems necessary. Where practical, the material alleged to be pornographic shall be attached to the affidavit so as to afford the magistrate the opportunity to examine this material. The summons must be served upon the corporation by delivery of it to an officer, director, managing or general agent, or cashier or assistant cashier thereof. The production of material alleged to be pornographic in any proceedings under this part against a corporation may be compelled by the issuance of a service of a subpoena duces tecum. It is not the intent of this section and service of a subpoena duces tecum. It is not the intent of this section to prohibit or limit the use of a subpoena duces tecum in proceedings against natural persons under this part.

12-3-11. Conspiracy an Offense. Punishment.

- (a) A conspiracy of two or more persons to commit any offense proscribed by this part is a misdemeanor punishable for each separate offense by a minimum mandatory fine of not less than \$100 and by imprisonment, without suspension of sentence in any way, for a term of not less than thirty (30) days, notwithstanding any provisions of Utah Code Annotated, Section 77-35-17 (1953, as amended), or statutes amendatory thereof.
- (b) Where a defendant has already been convicted once under this section, each separate further offense is a misdemeanor punishable by a minimum mandatory fine of not less than \$250 and by imprisonment, without suspension of sentence in any way, for a term of not less than thirty (30) days, notwithstanding any provisions of Utah Code Annotated, Section 77-35-17 (1953, as amended), or statutes amendatory thereof.

12-3-12. Licensing.

- (a) Pursuant to its authority to license and regulate occupations and activities as set forth in the Utah Code Annotated, and in accord with its duty to declare and abate nuisances, and protect the public morals, public health and public welfare, the City hereby enacts the following provisions:
 - (1) It is hereby declared that the willful or knowing public exhibition or commercial exploitation of that which is pornographic is a serious public nuisance, and such conduct on the part of any person constitutes an offense of moral turpitude.
 - (2) Any person or other entity licensed to serve or deal with the public manifesting such unlawful conduct shall have all business licenses suspended for a period of not less than six (6) months, and said license shall not be reinstated until an thorough character investigation of the person is conducted (the expense thereof to be borne by the licensee up to two hundred ninety-nine dollars (\$299.00) and upon the posting of a bond in the amount of one thousand dollars (\$1,000) to insure against further such activity.
 - (3) This licensing shall be enforced by a civil action or proceeding, but the adjudication of a conviction under the criminal portions of this article dealing with lewdness and obscenity or conviction under analogous State statutes dealing with obscenity and pornography shall be conclusively presumed to constitute a violation of this section and shall lead to the mandatory immediate suspension of said license in accord with the above provisions.

12-3-13. Omission to Stop Illegal Use of Land.

- (a) The omission of a landlord or landowner to take reasonable action to stop the illegal use of his land for prostitution, lewdness, the keeping of immoral places for the exhibition or commercial exploitation of that which is pornographic and remove the wrongdoer from the premises, after receiving official notification of said illegal conduct in writing from the County Attorney or City Attorney, and where there is probable cause for the landlord to believe said criminal conduct does exist, is a crime and nuisance proscribable as set forth herein.
- (b) "Reasonable action" in this section includes the prompt termination of tenancy and lawful ejectment of the wrongdoer from the premises.
- (c) All civil or criminal fines, damages, costs or penalties levied against the landlord, landowner or wrongdoer for such illegal activities on the premises after a violation of this section shall be a lien upon the land and property.

12-3-14. Separability Clause.

If any clause, sentence, or part of this chapter or its application to any person or circumstance shall for any reason be adjudged by any court of competent jurisdiction to be

invalid, the judgment shall not affect, impair, or invalidate the remainder of this chapter or its application to other persons or circumstances but shall be confined in its operation to the clause, sentence, paragraph, persons or circumstances, or part thereof directly involved in the controversy in which the judgment shall have been rendered.

12-3-15. Penalty.

Any violation of the provisions of this chapter, unless otherwise specifically provided, shall be deemed a class B misdemeanor.